IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 596 OF 2005

1. Narayan Gopal Juwale & anr. ... Appellants

V/s

1. Shri Shridhar Narayan Phadke
(since deceased, through L.Rs.)
and anr. ... Respondents

Mr. V.A. Gangal for the appellants.

Ms. Swati Chhagan Narvekar for Respondent No.2.

CORAM: P.V. KAKADE, J.

DATED: 11TH AUGUST, 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the Joint District Judge, Ratnagiri dated 20.7.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Ratnagiri, dismissing the plaintiffs' suit for declaration to the effect that the sale deed between defendant Nos. 1 and 2 is null and void and also for the perpetual injunction in respect of the suit property.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiffs came with the case that the suit property was originally owned by defendant No.1. Plaintiffs' fore-fathers were tenant in the suit property which was within the knowledge of defendant No.1. It was alleged that defendant No.1 used to accept khand/rent from the plaintiffs. So, on 27.2.1950 plaintiffs' father was declared as tenant in the suit property by mutation entry No.659. It was further alleged that defendant No.1 illegaly sold out the said suit property to defendant No.2 by a registered sale deed knowing fully well that plaintiffs' were tenant in the suit property and, therefore, declaration to the effect that the sale deed is null and void and perpetual injunction restraining the defendants from disturbing the peaceful possession was also claimed.

4. Defendants contested the suit on various grounds inter-alia submitting that plaintiffs' father had surrendered his tenancy right and accordingly mutation entry No.1112 was made in the year 1960 and was certified by Mamlatdar on 13.5.1960. Hence, on this

ground the plaintiffs' suit was sought to be dismissed.

5. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs' had failed to prove possession and cultivation in the suit property since the time of their forefathers. It was also held that the sale deed executed between defendant Nos. 1 and 2 was not void and legal and, as such, the plaintiffs were also not entitled to the reliefs claimed.

6. The appeal was carried to the District Court, Ratnagiri. The learned Joint District Judge, after hearing both parties, came to the conclusion that the findings recorded by the learned Trial Judge were legal and proper and, therefore, dismissed the appeal. Hence the present appeal.

7. At the outset, it must be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellants submitted, taking support of various judgments of the Apex Court as well as this Court, that surrender by tenant to be legal under the provisions of B.T. & A.L. Act, required to be fulfilled certain conditions, as

observed by the Apex Court in the case of **Ramchandra Keshav Adke v/s Govind Joti Chavare & ors., reported in A.I.R. 1975 SC 915** and those conditions were - (i) It must be in writing; (ii) It must be verified before the Mamlatdar; (iii) While making such verification the Mamlatdar must satisfy himself in regard to two things, namely, (a) that the tenant understands the nature and consequences of the surrender, and (b) that it is voluntary; (iv) The Mamlatdar must endorse his finding as to such satisfaction upon the document of surrender. It was also submitted that such surrender cannot be legal if it was made after tillers' day i.e. 1.4.1957 under the provisions of B.T. & A.L. Act and hence when the entry itself was showing that the entry No.1112 was effected on 22.4.1959 i.e. after tillers' day, the said surrender was not valid in law and not recognised by the provisions of the B.T. & A.L. Act. However, the learned counsel for the respondents brought to my notice the original document Exh.134 produced on record. It shows that though the entry No.1112 was made on 22.4.1959 endorsing the fact that fore-fathers of the plaintiffs' had surrendered the tenancy rights in favour of defendant No.1, still the remark column clearly shows that the application surrendering such rights was made to Tahsildar which was treated as Application No.133

No.TNC SR 85/1956 and it was decided on 19.1.1957. Therefore, on the basis of order dated 19.1.1957 on the said application, entry came to be effected on 22.4.1959 and, therefore, it cannot be said that verification of the surender is made after tillers' day and on such count the submission made on behalf of the appellants is found to be devoid of any merits.

8. The learned counsel for the appellants also submitted that, the record shows that inspite of all these aspects, the defendant No.1 continued to accept rent till the year 1965 and, therefore, the right of tenancy must be held to have been devoid. This observation is based on the observations made by the Trial Court in its judgment. However, the learned counsel for the respondents brought to my notice the very documents which were referred to by the Trial Court in order to observe that the rent was paid till 1955. The documents at Exhs. 92, 93, 98, 99, 103 and 104 are shown to me which are clear enough to show that the entire rent was paid till the year 1955 and not upto the year 1965 and, therefore, I am satisfied that the typographical mistake has occured in the judgment of the Trial Court and no khand/rent was in fact paid after the year 1955 or at any rate after surrender of tenancy.

9. For these reasons, I see that there is no substantial question of law involved in this appeal and the appeal bound to fail. Hence, the appeal stands dismissed with no order as to costs. Consequently, Civil Application No. 1027 of 2005 also stands dismissed with no order as to costs.

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